

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )	
Implementation of Section 621(a)(1) of )	
the Cable Communications Policy Act of 1984 )	MB Docket No. 05-311
as amended by the Cable Television Consumer )	
Protection and Competition Act of 1992 )	

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**COMMENTS OF THE SAN MATEO COUNTY TELECOMMUNICATIONS AUTHORITY  
("SAMCAT"), SAN MATEO COUNTY, SILICON VALLEY, CALIFORNIA**

These Comments are filed by the San Mateo County Telecommunications Authority located in San Mateo County, California ("SAMCAT") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, SAMCAT not only believes but its member agencies (cities and counties in the San Mateo County portion of Silicon Valley) have demonstrated time and time again that local government agencies can issue appropriate and timely local franchise for new entrants into the video services field, just as they have for established cable services providers.

Indeed, SAMCAT has been a leader in establishing competitive video services in this area and has approached new entrants such as RCN of California and more recently AT&T/SBC on their Project Lightspeed program and Verizon on their FIOS program even before these companies were ready to explore video agreements in several of these communities. In light of this record and ongoing policy of stimulating and encouraging competition in the video market, we are pleased to inform the Commission about the facts of video franchising in our region.

SAMCAT is an 18 member agency Joint Powers Authority (JPA) with a population base in excess of 560,000 residents in San Mateo County established under California law. Within San Mateo County, 17 of the county's 20 cities (Belmont, Brisbane, Burlingame, Colma, Daly City, Foster City, Half Moon Bay, Hillsborough, Millbrae, Pacifica, Portola Valley, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco and Woodside) as well as San Mateo County itself belong to SAMCAT. The purpose of SAMCAT is to aid these agencies in developing model cable TV video franchises, model telecom agreements, regional Public, Educational & Governmental (PEG) channels (such as the Emmy Award winning Peninsula TV – also known as "Pen TV") and other work in the telecommunications arena.

### **Cable Franchising in Our Region**

In all but one of the SAMCAT communities, a cable franchise as described in the Federal Cable Act has been issued to the Cable TV provider. These agencies also have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are discussed with the cable company in conjunction with the franchise agreement. These documents are collectively referred to as the "franchise" below. (The one exception to this in SAMCAT is the City of San Bruno which has successfully operated a Municipal Cable TV System since the 1950's. In the past, other video providers have elected not to apply for a competitive Cable TV franchise in this community. We understand that SBC/AT&T has expressed some interest in a Project Lightspeed permit and video agreement in this community in recent time.)

Rather than review the franchise process and status in all 18 communities, we will provide the highlights of the group's most recent franchise renewal. It is a renewal of a Cable TV video franchise with Comcast for 8 of the member agencies (Belmont, Brisbane, Foster City, Millbrae, Redwood City, San Carlos, San Mateo and San Mateo County) – also known as the "Group of 8".

### **Community Information for the Group of 8 Agencies**

All 8 agencies in the Group of 8 (listed above) are located in San Mateo County in the San Francisco/San Jose/Silicon Valley metropolitan area and represent close to 78,000 cable subscribers. The franchised cable provider is currently Comcast of California, XII ("Comcast"). Prior holders of these franchises included TCI of California, AT&T Broadband, Western Cabled Systems and United Artists Cablevision, among others. Comcast now owns all of these systems.

### **The New Group of 8 Franchise with Comcast**

The new franchise with Comcast began in December 2005 for all but one of the agencies (San Mateo County) and expires in November 2020 for these agencies. (The San Mateo County franchise is slated for action by the County Board of Supervisors this month.

The previous franchise agreements for these 8 agencies expired in 2003. Under the statutory timeline laid out in the Federal Cable Act, the cable operator had a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act.

When we began negotiations for this latest franchise agreement, the cable operator was AT&T Broadband. All eight (8) agencies were members of the San Mateo County Telecommunications Authority ("SAMCAT") and had franchise agreements which expired within 6 months of one another. Accordingly, these eight (8) agencies grouped together to negotiate concurrently with the cable operator, in order to create efficiencies and economies of scale amongst the 8 agencies. The cable operator agreed to this joint negotiations process.

AT&T filed the requisite notice requesting that we commence informal negotiations with them in October 2000. We began franchise negotiations with AT&T in the Fall of 2002. Immediately thereafter, AT&T merged its operations with Comcast. A Section 394 Transfer proceeding ensued, and each of the 8 agencies approved the transfer in late 2002. It was not until after that date that we were able to begin informal negotiations in earnest with Comcast, the new operator. Negotiations completed in October 2005, and the franchise agreement was approved by the 8 agencies in November and December 2005 with the one exception noted above.

The franchise in all 8 agencies requires the cable operator to pay a **franchise fee** to the City or County in the amount of 5.0% of the cable operator's gross revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator in accordance with the Federal Cable Act. It is important to note that the definition of gross revenues includes a broad definition that includes not only cable service fees (less bad debts), but other revenues earned by the operator on cable operations, including (but not limited to) late fees, installation and upgrade charges, converter / control box fees, advertising revenue, home shopping commissions, and lockout device fees. In short, the cable operator compensates the City for the use of its rights-of-way on virtually all revenues earned in the operation of its cable services in these 8 agencies.

The 8 agencies require the cable operator to provide the **capacity for public, educational, and/or governmental ("PEG") access channels** on the cable system. In these agencies, there are currently 2 channels devoted to public access: a local government access channel that serves the subscribers of that community; and, a second Countywide channel known as Peninsula TV (or "Pen TV"), that is operated by SAMCAT as a regional community channel that serves public, educational and government access community needs throughout San Mateo County. Comcast is also required to provide a 3<sup>rd</sup> channel as early as January 1, 2007 that can serve any lawful PEG purpose, and a 4<sup>th</sup> channel no sooner than 2 years after the 3<sup>rd</sup> is activated for the any lawful PEG purposes as determined by the City. (SAMCAT and the 8 Agencies currently plan to use these 3<sup>rd</sup> and 4<sup>th</sup> channels for local school district and countywide school training and programming in the next few years.)

The franchise requires that our PEG channels be supported in the following ways by the cable operator: Comcast is required to build infrastructure at their expense to accept video origination at our City Hall. Comcast has committed PEG Access Capital Grants with a payment schedule that started January 1, 2006 and ends December 1, 2015. These funds support a portion of the ongoing capital needs for the local PEG channels now in operation in these 8 agencies as well as each agency's portion of capital contributions towards Peninsula TV (which is funded by 14 of the 18 SAMCAT agencies).

The Group of 8 franchises also contain the following **institutional network ("I-Net") requirements**: Comcast has committed to constructing a fiber network that will interconnect locations in these 8 agencies that include City Hall sites, County Center, the San Mateo County Office of Education, recreation and parks facilities, public K-8 schools, and a performing arts center. Concurrently with the 8 agencies mentioned above, the Fiber Network will also interconnect the 7 City Halls and the County Government Center. When combined, a total number of 86 sites across 8 agencies will be interconnected. The construction of the fiber network will be substantially complete by December 31, 2007. We expect the 8 agencies to use the I-Net facilities in the following ways:

- Video Origination – We will be able to originate video from any of the 86 sites throughout the County for transmission on any local government access channel or on Peninsula TV, the regional channel. Events such as legislative (City Council) meetings, town hall meetings, emergency operations events, youth sports, concerts, seminars / conferences, and community parades or celebrations will be cablecast or recorded live on location. Such video origination can also be used for private (“narrowcasted”) transmission for such uses as: public safety (police and fire) training; emergency operations training and/or communications; regional municipal / education meetings; classroom training; and, security surveillance between any of the sites on the Fiber Network.
- Data transmission – Each agency will be able to use the Fiber Network for data communications between municipal locations. Also, the K-8 schools operated by a local school district intend to use the fiber network to support their network communications needs. Regionally, agencies are anticipating the use of the fiber network as a “backhaul” for wireless and wired public safety communications, a backbone for county educational data resources, as a way to share geographic information systems data, and to support other applications such as elections reporting and registration and public health information.
- Voice communications – Some of the agencies are interested in using the Fiber Network to support internal voice communications using Voice over IP technology. The network can also replace existing modem-type communications by converting those services to Ethernet applications.

The franchise contains the following requirements regarding **emergency alerts**: Each agency, or the County Emergency Operations personnel, has the ability to override video and audio on all channels on the cable channel line-up (digital, analog and pay-per-view) to provide emergency messages to the community. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

The franchise contains the following **customer service obligations**, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise:

- Regulation of service rates in compliance with 47 CFR Part 76 subpart N

- Non-standard installations
- Sales procedures
- Consumer protection and service standards, including office hours and telephone availability, outages, service calls, notifications to subscribers, billing and information, compliance verification, and subscriber complaints.
- Refund policies
- Local office requirements
- Records and reporting requirements

The franchise contains the following reasonable build requirements for the cable operator: the cable operator is required to provide a bi-directional system with a minimum of 750 MHz capacity to all customers within 125 feet of its existing distribution system, which includes all residences and approximately 50% of the business community. The system utilizes a hybrid fiber-coaxial architecture in accordance with FCC technical standards.

The franchise requires that the cable operator currently provide service to the areas of our community noted herein: all residences within 125 feet of current service from Comcast are capable of receiving Cable TV video service from Comcast. Additionally, the franchise expressly prohibits income-based demographic "redlining" of the service area by the cable provider.

In order to ensure that residents have access to advanced telecommunications technologies, the previous franchise agreement called for a requirement to implement the hybrid fiber-coaxial system described above. This helped provide assurance to our community that advanced telecommunications services had the opportunity of being provided by the cable operator. Accordingly, in 1999, broadband (high-speed internet) services were rolled out to the community. A large number of residences use the cable operator's high-speed internet services based on informal requests for such information from the cable provider, with others using a mix of DSL services from the local Bell operator and/or dial-up access. No other telecommunications services (e.g., VoIP) have been deployed by the existing cable operator, although they have notified us of the intent to roll out such services in 2007.

The franchise contains a "Competitive Equity" (or "level playing field") provision. This provision provides the agencies with a strong incentive to insure that new video providers (such as the telephone companies) agree to the same terms and conditions as the franchise, or these benefits will become unavailable to our communities and residents. The clause states the following:

*"The Grantee acknowledges and agrees that the City reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the City; provided, however, that no such franchise or similar lawful authorization shall contain material terms or conditions which are substantially more favorable or less burdensome to the*

*competitive entity than the material terms and conditions herein, including, but not limited to: Franchise Fees; insurance; System build-out requirements; security instruments; Public, Education and Government access Channels and support; customer service standards; required reports and related record keeping; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are generally equivalent. If any such additional or competitive franchise is granted by the City, the City agrees that it shall amend this Franchise to include any more favorable or less burdensome terms or conditions.*

*Notwithstanding any provision to the contrary, at any time prior to the commencement of the Grantee's thirty-six (36) month renewal window provided by Section 626 of the Cable Act, that a non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of Video Programming within the Franchise Area without a franchise or other similar lawful authorization granted by the City, then the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date thirty six (36) months from the first day of the month following the date on which the competitor passes twenty-five percent (25%) of the homes in the Franchise Area and begins providing Cable Service. Grantee shall immediately thereafter secure franchise renewal rights pursuant to Section 626 of the Cable Act with no further notice to the City required. The City and Grantee shall then enter into proceedings consistent with Section 626 for renewal of this Franchise. The City and Grantee shall have all rights and obligations provided under said Section 626. In no event, however, shall the term of this Franchise be reduced to less than eight (8) years from the effective date of this Franchise.*

*Notwithstanding any provision to the contrary, should any non-wireless facilities based entity provide Cable Service within the Franchise Area during the term of this Franchise without a franchise granted by the City, then Grantee shall have all rights which may be available to assert, at Grantee's option, that this Franchise is rendered 'commercially impracticable,' and invoke the modification procedures set forth in Section 625 of the Cable Act."*

The franchise contains the following **insurance and bonding** requirements:

- Performance bond to cover cable system construction activities.
- Performance bond for franchise breaches, subject to noticing provisions.

- Normal permitting and bonding requirements made of all contractors working in the City's rights-of-way.
- Insurance in the following amounts:
  - General Liability -- \$2 million
  - Automobile Liability -- \$2 million
  - Workers' Compensation – per State statutes

The cable franchise grants the cable operator **access to the public rights of way and compatible easements** for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate City and/or County department before it may access the public rights of way. The cable operator is subject to the normal permitting requirements of any contractor working in or encroaching on the City's rights-of-way. Fees are assessed based upon the construction value of the project, and can range as low as \$150 to as high as \$100,000 or more depending on the extent of construction. The franchise agreement also requires that the cable operator relocate facilities at their cost within 30 days when safety, health or welfare of the public requires a change mandated by the City.

The franchise agreement provides for the following **enforcement mechanisms** by which we are able to ensure that the cable operator is abiding by its agreement:

- Right to records – in some cases upon request, in others as required per the franchise, related to customer service standards, franchise fees, construction maps, and others. In any case, the City has the right to inspect Comcast's records during normal business hours at their local offices.
- Right to audit – the City can audit submitted records at the City's expense unless the audit yields underpayment of franchise fees exceeding 5% of what was originally reported.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act, it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

The current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated based upon the applicability of those laws (federal, state or local) to the existing terms of the franchise agreement. In essence, the terms of the franchise agreement prevail unless they are superceded by federal, state or local law. In addition, several conditions within the franchise agreement (e.g., technical, construction, customer service) specifically call

out federal, state or local law as governing. The most noteworthy provision in the current franchise agreement is with respect to any subsequent federal or state law changes that alter the competitive landscape with respect to cable or video franchising, which is discussed under “Competitive Cable Systems” below.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance, there are several state laws that deal with noticing provisions of actions taken by the legislative body of a local government (e.g., 72 hour notice of actions to be taken in any public meeting, 10 day notice for any public hearings, “sunshine laws” to ensure open public access to government). In addition, several conditions in the agreement require the local government to provide notices to the cable operator and the right for the cable operator to cure potential breaches of the agreement. In addition, federal law mandates formal vs. informal negotiations processes that have several requirements to ensure the cable operator is treated fairly by the local franchise authority. In short, the local government is not exempt from several due process requirements in managing its relationship with the cable operator.

#### **Competitive Cable TV Options – 2<sup>nd</sup> Cable TV Entrant – RCN of California**

Nearly 8 years ago, RCN Communications entered into negotiations with several cities in San Mateo County to provide competitive services as a choice to the incumbent primary cable operator, Comcast. This process started when RCN expressed interest in a Cable TV franchise in the City of Daly City.

Not only did Daly City officials work with RCN to provide them with such a Cable TV franchise with terms equivalent to those enjoyed by the incumbent Cable TV operator (AT&T Broadband at the time), SAMCAT then began work to encourage RCN to obtain additional Cable TV franchises in the SAMCAT service area. The result of this pro-active approach to competition was that the first competitive Cable TV franchises in California that RCN obtained were from several of the SAMCAT agencies (Daly City, Burlingame, San Mateo and Redwood City).

#### **Competitive Cable TV Options – 3<sup>rd</sup> and 4<sup>th</sup> Cable TV Entrants – AT&T and Verizon**

In January 2005, the Chairman of SAMCAT was able to view a demonstration of the SBC/AT&T Project Lightspeed systems known as “Uverse” which feature a set top box from Microsoft and associated equipment from Alcatel and others. This video system offers basic and premium channels and all of the other features our residents enjoy today from Cable TV operators.

After viewing this technology, SAMCAT proactively contacted SBC officials and offered a video agreement for the SAMCAT agencies equivalent to the franchise agreements with the Cable TV operator in each of these communities. The SAMCAT Chairman was told that SBC was “not interested at this time” in such approvals to start their project in early 2005.



Several months later (in October and November 2005), some of the SAMCAT member agencies were approached by AT&T about obtaining permits and agreements for Project Lightspeed. While we were disappointed that AT&T let most of 2005 pass before getting back to us, we were encouraged that they had not dropped the project altogether.

Based upon the SAMCAT Legal Counsel's analysis of the Project Lightspeed services, SAMCAT has informed AT&T that they are subject to cable franchise provisions under the Federal Cable Act and the State of California Government Code section 53066, et al. We are also aware that to the extent that SAMCAT agencies allow AT&T to build the Project Lightspeed video system without equivalent compensation, PEG funding, I-Net provision, customer service standards, build out requirements, commitment to provide the services beyond a 3 year window, etc., those items are in jeopardy from the incumbent Cable TV operator as well due to the Competitive Equity language in the most recent Comcast Cable TV franchises (see earlier discussion).

At this time, AT&T has held multiple meetings with some of the SAMCAT agencies and has failed to provide follow-up documents and contacts to others. The SAMCAT agencies remain interested in competitive cable TV services beyond those provided to date by RCN, but the actions of AT&T indicate a mixed response. Time will tell whether AT&T is serious about pursuing video agreements that are fair and equitable with the SAMCAT agencies.

It is also worth noting here that SAMCAT has also expressed interest in entering into equivalent Cable TV video franchises with Verizon for their "FIOS" Fiber to the Premises (FTTP) technology. We have noted with interest Verizon's decision to sign equivalent Cable TV franchises in over 50 cities across the country with 15 more pending in California alone.

We have also been intrigued by Verizon's commitment to offer full City build outs within a 5 year time frame to cities in New Jersey. That is a more definitive time horizon that has been offered by AT&T/SBC which has offered no firm build out schedule in our communities to date. While we are outside Verizon's phone service footprint at this time, their 5 year build out commitment is very attractive and SAMCAT intends to continue to watch for opportunities to engage Verizon in talks to bring their video products to this market as well.

SAMCAT recognizes that at some point the market for video services will be saturated. With Comcast in place in most SAMCAT agencies and RCN in place as the 2<sup>nd</sup> video entrant in several of the same agencies, it is unclear how the telephone companies will do as the 3<sup>rd</sup> and 4<sup>th</sup> video entrants in this area. Even so, our attitude is that if the incumbent telephone companies wish to match the terms of the incumbent cable TV operators, we welcome them to compete here as well.

## Conclusion

As evidenced above, the local cable franchising process functions well in the 18 SAMCAT member agencies located throughout San Mateo County in the Silicon Valley region of California. We have experienced staff that work proactively with cable providers and other video services providers to both see that the needs of the local community are met and to ensure that the practical business needs of such providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and even-handed manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local communities' specific needs are met and that local customers are protected.

Local franchises provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. We have the capacity to assist the public in getting good customer service from its cable service providers.

We understand the geographic, climatic, and infrastructure issues that may impair cable services from time to time in our communities. We are well versed in the aspects of federal and state law to be a frontline resource for our community to help them get great service from our cable service providers.

We feel that any attempts to nationalize cable franchising, including customer service enforcement, will degrade the effectiveness and timeliness of response to customers. The federal government need not establish and invest millions in taxpayer or ratepayer dollars to create an oversight bureau for cable franchises when those core competencies exist at the local level.

Finally, local franchises allow each community to have a voice in how local cable systems will be implemented and what features, such as PEG access, institutional networks or local emergency alerts, will be available to meet local needs. These factors are equally present for new entrants as for existing users. We are best positioned to determine what is in the best interests of our community.

The San Mateo County Telecommunications Authority (SAMCAT) therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,  
San Mateo County Telecom Authority ("SAMCAT")

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